

WOMBLE  
CARLYLE  
SANDRIDGE  
& RICE

A PROFESSIONAL LIMITED  
LIABILITY COMPANY

Suite 3250  
One Ninety One Peachtree Tower  
191 Peachtree Street, N.E.  
Atlanta, GA 30303

Telephone: (404) 614-2580  
Fax: (404) 614-2595

20292  
OCT 7 1996 11:55 AM

James H. Thompson  
Direct Dial: (404) 614-2583  
Direct Fax: (404) 614-2595  
E-mail: j\_thompson@wcsr.com

October 2, 1996

Via Federal Express

Mr. Vernon Williams, Secretary  
U.S. Surface Transportation Board  
12th & Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Secretary:

I have enclosed an original and one counterpart of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a mortgage and a primary document, dated September 30, 1996.

The names and address of the parties to the documents are as follows:

Mortgagor: L&S Holding Company  
Post Office Box 1929  
Laurinburg, North Carolina 28353

Mortgagee: Metropolitan Life Insurance Company  
4427 Garwood Place  
Post Office Box 69  
Richmond, Indiana 47375-0069

A description of the equipment covered by the document follows:

208 railroad cars and 14 locomotives, more particularly described on Exhibit A attached hereto.

A#0006892.01

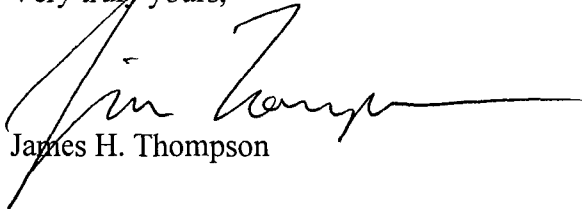
OCT 7 1996 10:55 AM '96  
RECEIVED  
SURFACE TRANSPORTATION  
BOARD

October 2, 1996  
Page Two

A fee of \$21 is enclosed. Please return the original and any extra copies not needed by the Board for recordation to me at the address set forth above.

I am an attorney representing the above-referenced Mortgagee. If you have any questions, please call.

Very truly yours,



James H. Thompson

JHT:cv  
Enclosures

WOMBLE  
CARLYLE  
SANDRIDGE  
& RICE

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LIABILITY COMPANY

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One Ninety One Peachtree Tower  
191 Peachtree Street, N E  
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Telephone (404) 614-2580  
Fax (404) 614-2595

James H Thompson  
Direct Dial (404) 614-2583  
Direct Fax (404) 614-2595  
E-mail j\_thompson @ wcsr com

October 4, 1996

Via Federal Express

Ms. Cheryl Fort  
U.S. Surface Transportation Board  
12th & Constitution Avenue, N.W.  
Room 2311  
Washington, D.C. 20423

RECEIVED  
SURFACE TRANSPORTATION  
BOARD  
OCT 7 10 55 AM '96

Re: Documents sent for recording (Metropolitan Life Insurance Company/L&S Holding Company)

Dear Ms. Fort:

I have enclosed an additional check from our firm in the amount of \$1.00 needed to record documents sent to your office for recording on October 2, 1996.

If you have any questions or require additional information, please call.

Very truly yours,

James H. Thompson

JHT:cv  
Enclosures

A#0006906 01

LAURINBURG AND SOUTHERN RAILROAD COMPANY

DESCRIPTION OF THE FREIGHT CARS

# OF CARS	DESCRIPTION
15	Covered hoppers, 100 ton, 2931 cubic feet, built 1974, LRS 1001-1015
5	Covered hoppers, 100 ton, 2980 cubic feet, built 1977, LRS 1051-1055*, SIRX 1053
7	Covered hoppers, 100 ton, 3500 & 3510 cubic feet, built 1962 & 1963, rebuilt 1982, SIRX 1061-1063, & LRS 1064-1067
20	Covered hoppers, 100 ton, 4427 cubic feet, built 1967, rebuilt 1983, SIRX 1071-1090
5	Box cars, 100 ton, sixty foot, cushioned, built 1977, plate E, LRS 2001-2005
14	Gondolas, 52'6", 100 ton, built 1965, rebuilt 1981, rigid underframe
2	Gondolas, 52'6", 100 ton, built 1965, rebuilt 1981, cushioned underframe
6	Gondolas, 52'6", 100 ton, built 1965, rebuilt 1981, outfitted for glass service
63	Box cars, 50 foot, 70 ton, rigid underframe, plate C, built 1979, LRS 4002-4099*
25	Box cars, 50 foot, 70 ton, cushioned underframe, plate C, built 1979, LRS 5076-5100*
30	Box cars, 50 foot, 70 ton, rigid underframe, plate B, built 1966, rebuilt 1980 & 1981, LRS 7221-7257*
9	Box cars, 50 foot, 70 ton, rigid underframe, plate B, built 1956, rebuilt 1979, LRS 7260-7269*
2	Box cars, 50 foot, 70 ton, cushioned underframe, plate C, built 1980, LRS 8001 & 8002
4	Refrigerated box cars, 70 ton, cushioned, insulated, built 1965, rebuilt 1981, LRS 3000-3003
1	Refrigerated box car, 70 ton, cushioned, insulated, Built 1979, LRS 30004

\* Not inclusive

**LAURINBURG AND SOUTHERN RAILROAD COMPANY**  
**LOCOMOTIVES**

<u>UNIT #</u>	<u>LOCOMOTIVE TYPE</u>
LRS 115	SW-1
117	SW-1
118	SW-1
121	SW-1
123	NW-2
126	NW-2
127	NW-2
129	NW-2
130	NW-2
133	SW-1
135	SW-1
139	NW-2
140	SW-1
141	SW-1

Total 14 Units

**SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C. 20423-0001**

10/7/96

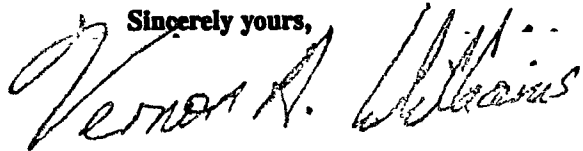
James H. Thompson  
Womble Caryle Sandridge & Rice  
One Ninety One Peachtree Tower  
191 Peachtree Street, NE., Ste. 3250  
Atlanta, Georgia 30303

**Dear**

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/7/96 at 11:00AM, and assigned recordation number(s). 20292.

Sincerely yours,

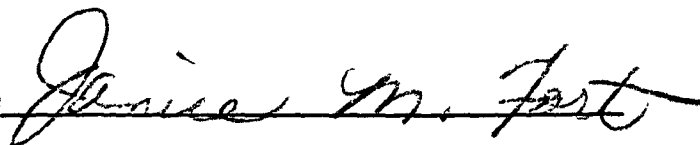


Vernon A. Williams  
Secretary

**Enclosure(s)**

\$ 22.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature



Prepared by: Hardin G. Halsey  
Womble Carlyle Sandridge & Rice, PLLC  
1600 BB&T Financial Center  
200 West Second Street  
Winston-Salem, N.C. 27101

30392  
OCT 6 1996 11:55 AM

CHATTEL MORTGAGE, ASSIGNMENT OF LEASES AND SECURITY AGREEMENT

THIS CHATTEL MORTGAGE, ASSIGNMENT OF LEASES AND SECURITY AGREEMENT ("Mortgage") dated as of September 30, 1996, is made and given by L&S HOLDING COMPANY (successor by merger to Laurinburg and Southern Railroad Company and Woodland Farms, Inc.), a North Carolina corporation, with an address at P.O. Box 1929, Laurinburg, North Carolina 28353 ("Mortgagor") to METROPOLITAN LIFE INSURANCE COMPANY, with an address at 4427 Garwood Place, P.O. Box 69, Richmond, Indiana 47375-0069 ("Mortgagee").

Recitals:

1. Laurinburg and Southern Railroad Company and Woodland Farms, Inc. received a loan from Mortgagee in the principal amount of \$900,000 (the "L&S Loan"), evidenced by a Loan Agreement (as hereafter extended, amended or modified the "L&S Loan Agreement") dated August 29, 1989 among Laurinburg and Southern Railroad Company, Woodland Farms, Inc., and Mortgagee, and evidenced by a Deed of Trust Note dated August 29, 1989 (as hereafter extended, amended or modified, the "L&S Note"), executed by Laurinburg and Southern Railroad Company and Woodland Farms, Inc., and cosigned by E. Hervey Evans, Jr., Carolyn Evans, John B. Evans, Margaret Evans, McNair Evans, Patricia Evans, Murphy Evans and Helen Evans (collectively, the "Evans"). The obligations of Laurinburg & Southern Railroad Company and Woodland Farms, Inc. under the L&S Loan were secured by a Deed of Trust (as hereafter extended, amended or modified, the "L&S Deed of Trust") on certain property of Laurinburg & Southern Railroad Company and Woodland Farms, Inc. (the "L&S Property") dated August 29, 1989, and recorded with the Register of Deeds for Scotland County, North Carolina at Deed Book 253, Page 159 and with the Register of Deeds for Robeson County, North Carolina at Deed Book 686, Page 0792. The L&S Loan and the obligations of Laurinburg and Southern Railroad Company and Woodland Farms, Inc. under the L&S Note, the L&S Loan Agreement and the L&S Deed of Trust were assumed by the Mortgagor and title to the L&S Property passed to the Mortgagor by operation of law when Laurinburg and Southern Railroad Company and Woodland Farms, Inc. were merged with and into the Mortgagor, with the Mortgagor being the surviving corporation.

2. The Evans received a loan from the Mortgagee in the principal amount of \$1,075,000 (the "Evans Loan"), evidenced by a Deed of Trust Note (as hereafter extended, amended or modified, the "Evans Note") dated January 29, 1981 executed by the Evans. The obligations of the Evans

under the Evans Loan were secured by the L&S Deed of Trust and by a Deed of Trust on certain property of the Evans (the "Evans Property") dated January 29, 1981 (as modified and as hereafter extended, amended or modified, the "Evans Deed of Trust") and recorded in the Register of Deeds for Scotland County, North Carolina in Deed Book 169, Page 180.

3. The Mortgagor and the Evans have defaulted under the L&S Note and the Evans Note, respectively. Mortgagee has agreed to forebear from exercising its remedies with respect to such defaults (including without limitation, foreclosing on the L&S Property and the Evans Property) on the conditions and for the time periods set forth in that certain Forbearance Agreement dated September 30, 1996 among the Mortgagee, Mortgagor and the Evans (as hereafter amended, extended or modified, the "Forbearance Agreement"). As a condition to its agreements contained in the Forbearance Agreement, and as consideration therefor, Mortgagee has required Mortgagor to grant it security interests in certain collateral, as more particularly set forth below. Mortgagee has also required Mortgagor to assign Mortgagee its right, title and interest in and to certain payments due to Mortgagor under a Purchase and Sale Agreement dated February 24, 1994 by and among Mortgagor, Rocky Mount & Western Railroad Co., Inc., Piedmont & Atlantic Railroad Co., Inc., H. Peter Claussen and Linda C. Claussen (the "Purchase Agreement") and due under a Sublease, Limited Assignment and Agreement to Assign (undated) among the Mortgagor, Piedmont & Atlantic Railroad Co., Inc., H. Peter Claussen and Linda C. Claussen (the "Sublease") pursuant to an Assignment of Payments under Purchase Agreement and Sublease dated September 30, 1996 between Mortgagor and Mortgagee (as hereafter amended, extended or modified, the "Assignment of Payments").

4. Mortgagor is the sole owner of the railroad cars and locomotives (the "Rolling Stock") more particularly described and listed on Exhibit A annexed hereto and made a part hereof. Mortgagor has entered into various lease agreements and desires to enter into other lease agreements in the future (collectively, the "Leases") with various lessees (the "Lessees"), each of which leases one or more of the Rolling Stock identified on Exhibit A as subject to such Leases to the Lessees.

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

#### **ARTICLE I - The Mortgage**

THAT IN CONSIDERATION of the premises herein and of the Forbearance Agreement and of other good and valuable consideration, the receipt whereof is hereby acknowledged, and in order to secure the performance by Mortgagor and of the Evans of all of their respective obligations under the L&S Note, the L&S Loan Agreement, the L&S Deed of Trust, the Evans Note, the Evans Deed of Trust, the Forbearance Agreement, the Assignment of Payments and this Mortgage (collectively, the "Obligations"):

(a) the Mortgagor hereby executes and constitutes a first and absolute mortgage and security interest and does by these presents mortgage unto Mortgagee, its successors and assigns, the following property of the Mortgagor, subject only to Permitted Liens:



- (i) the Rolling Stock;
- (ii) all attachments, accessories, fittings, equipment and property now or hereafter affixed to the Rolling Stock or used in connection with the Rolling Stock, and all substitutes and replacements thereof;
- (iii) all books and records relating to any of the foregoing whether property existing or hereafter arising, including, without limitation, all tapes, cards, computer programs and computer data of any computer service bureau or other third party;
- (iv) all improvements and replacements hereafter made in or to the Rolling Stock; and
- (v) any and all products and proceeds of the foregoing in any form, including without limitation, any and all proceeds of the sale, lease, requisition, taking or other disposition of any or all of the foregoing (including, without limitation, all income, profits, leases and rental payments, per diem mileage, mileage credits, excess mileage credits, and any and all other revenues or monies of whatsoever nature generated by or attributable to the foregoing), any claims against third parties for loss, damage or destruction of any or all of the foregoing, and all insurance proceeds relating to all of the above.

As used herein, "Permitted Liens" shall mean liens of carriers, warehousemen, mechanics, materialmen and vendors imposed by mandatory provisions of law and incurred in good faith in the ordinary course of business for sums not yet due and payable and the liens and security interests granted to Greyhound Financial Corporation ("Greyhound") pursuant to the Chattel Mortgage and Security Agreement dated May 19, 1992 between Greyhound and Laurinburg and Southern Railroad Company, and the liens and security interests granted to Greyhound pursuant to the Loan and Security Agreement dated May 19, 1992 among Greyhound, Laurinburg and Southern Railroad Company, Yadkin Valley Railroad Company, Robeson County Railroad Corporation and Nash County Railroad Corporation.

(b) Mortgagor does hereby grant, sell, transfer and assign to Mortgagee all of the right, title and interest of Mortgagor in and to the Leases (whether now in effect or hereafter entered into by Mortgagor), together with all rentals, payments, income, profits, per diem mileage, mileage credits, excess mileage credits, insurance proceeds and proceeds from requisition or taking now due and which may hereafter become due to Mortgagor by virtue of the Leases. Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's true and lawful attorney, in its name and stead to enforce said Leases and to collect all amounts due thereunder. Prior to an Event of Default,

Mortgagor shall have a license to collect (but not in advance of their due date) retain, use and enjoy the amounts due under the Leases.

TO HAVE AND TO HOLD the same unto Mortgagee, its successors and assigns forever upon the terms herein set forth for the performance by Mortgagor and of the Evans of all of the Obligations.

PROVIDED only and the condition of these presents is such that if Mortgagor, its successors and assigns and the Evans shall repay or cause to be repaid to Mortgagee the L&S Holding Company Loan and the Evans Loan and interest thereon and shall have otherwise completed performance of all of the Obligations, all without fraud or delay and according to the true intent and meaning thereof, then this Mortgage and the rights hereunder granted to Mortgagee shall cease, determine and be void and in such event Mortgagee agrees at the expense of Mortgagor to execute all such documents as Mortgagor may reasonably require to discharge this Mortgage.

## **ARTICLE II - Assignment by Mortgagor**

### **Section 1 - Assignment of Insurance and Proceeds**

Mortgagor hereby assigns to Mortgagee, its successors and assigns, subject only to the Permitted Liens, all of Mortgagor's right, title and interest under, to and in all policies and contracts of insurance of whatsoever nature that have now been, or may from time to time hereafter during the continuance of the Mortgage and the existence of the security interest created hereby, be taken out in respect of the Rolling Stock, their revenue, disbursements, profits or otherwise and all of the benefits thereof, including all claims of whatsoever nature thereunder in respect of the Rolling Stock, return of premiums and the rights under such policies and contracts.

### **Section 2 - Assignment of Other Compensation Payable; Total Loss**

Mortgagor hereby assigns to Mortgagee, its successors and assigns all of the Mortgagor's right, title and interest to any and all moneys and claims for moneys and other compensation which may be or become due or payable to the Mortgagor with respect to or as a result of the constructive or agreed or arranged or compromised or actual Total Loss of the Rolling Stock, or any of them and all claims for damages arising out of or caused or occasioned howsoever by any such Total Loss.

As used herein the term "Total Loss" shall mean the loss, damage or destruction of the Rolling Stock, or any of them, with the result that such Rolling Stock, or any of them, shall be rendered substantially unfit for further use by Mortgagor or condemned or otherwise compulsorily acquired or requisitioned by any governmental agency or authority.

In the event of a Total Loss of any of the Rolling Stock, insurance proceeds or awards in respect thereof shall be applied by Mortgagee to prepay the L&S Loan and the Evans Loan in whole or in part.

### **Section 3 - Application by Mortgagee Upon Event of Default**

Upon the happening of an Event of Default as defined in Article IV, Section 1, all proceeds of the foregoing assignments and all moneys hereby assigned shall be applied by Mortgagee in accordance with Article IV, Section 5 hereof and otherwise in accordance with Article V(b).

### **ARTICLE III - Representations, Warranties and Covenants**

Mortgagor represents, warrants and covenants to Mortgagee as follows:

(a) **Good Standing: Ownership of Mortgagor**

Mortgagor is duly organized, validly existing and in good standing under the laws of the State of North Carolina and, where required, in each jurisdiction in which it is doing business, with powers adequate for making and performing this Mortgage, the Forbearance Agreement and the Assignment of Payments, for undertaking and performing the Obligations, and for carrying on its business and owning its property. Mortgagor is duly authorized and qualified under all applicable laws, regulations, ordinances and orders of public authorities to carry on such business. Mortgagor will, until performance of all of the Obligations has been completed, maintain such existence, standing, domicile, powers, authority and qualifications.

(b) **Authority to Mortgage**

Mortgagor is duly authorized to mortgage and assign the property conveyed hereunder. All corporate action necessary and required by Mortgagor's or Articles of Incorporation or By-laws, or by law for the execution and delivery of this Mortgage, has been duly and effectively taken, and this Mortgage is and will be valid and enforceable against Mortgagor, the Rolling Stock and the Leases in accordance with its terms.

### **Section 2 - The Rolling Stock**

(a) **Ownership of Rolling Stock**

Mortgagor is the sole and lawful owner of the whole of the Rolling Stock, free from all liens, security interests, mortgages (other than this Mortgage and the Permitted Liens), charges or encumbrances and the Rolling Stock shall be kept free and clear of all such liens and encumbrances, except liens arising by operation of law in the ordinary course of business and the Permitted Liens. Mortgagor will warrant and defend for the benefit of Mortgagee the title and possession of the mortgaged property and every part thereof against the claims and demands of all persons.

(b) Maintenance and Condition

Except as otherwise noted on the attached Exhibit A, the Rolling Stock and each of them are in good condition, repair and appearance and in good and efficient working order, reasonable wear and tear excepted, and acceptable for use in unrestricted interchange and Mortgagor covenants that at all times, at its own cost and expense, and except as otherwise noted on the attached Exhibit A, the Rolling Stock have been and will be maintained as such in accordance with the Association of American Railroads Rules of Interchange and the Department of Transportation requirements and the requirements contained in the Leases. Except for alterations or changes required by law, Mortgagor shall not, without the prior written approval of Mortgagee, effect any change in the design, construction or body of the Rolling Stock. Mortgagor shall notify Mortgagee promptly of any alterations or changes in the Rolling Stock required by law, describing by identification number the Rolling Stock affected and the nature of the alterations or changes.

(c) Mortgage

Mortgagor is, by this Mortgage and the registration thereof, constituting in favor of Mortgagee, among other things, all the rights of a security interest and mortgage on the Rolling Stock to secure the due and punctual performance of the Obligations, subject only to the Permitted Liens.

**Section 3 - Insurance**

(a) Rolling Stock Fully Insured

Mortgagor covenants with Mortgagee that so long as this Mortgage shall be in force Mortgagor shall obtain and maintain (or cause to be maintained) at all times in full force and effect such casualty, hazard, business interruption, public liability, products liability and other insurance (except title) as is reasonably required by Mortgagee, written by insurers in amounts and forms satisfactory to Mortgagee.

(b) Mortgagee's Right to Collect Proceeds and to Insure

Mortgagee is hereby authorized, but not required, in its own name and/or Mortgagor's name to demand, collect, receipt for, and prosecute all necessary actions in the courts to recover any and all insurance moneys which may become due and payable under any insurance. If Mortgagor shall at any time fail to pay or to cause to be paid when due any insurance premiums, calls or other costs related to obtaining or maintaining the insurance required hereunder, or to obtain any required insurance or to deliver to Mortgagee all policies, certificates, contracts of insurance, binders and cover notes and all renewals thereof as required by the provisions of this Mortgage, Mortgagee may, but shall not be required to, procure such insurance and/or pay unpaid premiums and other costs, and the cost and expense thereof, with interest at the default rate specified in the L&S Note, shall be an

additional indebtedness due from Mortgagor to Mortgagee secured by this Mortgage and shall be paid by Mortgagor on demand.

#### **Section 4 - Compliance with Insurance Terms, Laws, etc.**

(a) Mortgagor shall not do any act, or suffer or permit any act to be done, whereby any insurance shall be or may be suspended, impaired or defeated, and shall not suffer or permit the Rolling Stock, or any of them, to engage in any business or to carry any cargo not permitted under the policies of insurance in effect, without first covering such Rolling Stock to the amount herein provided by insurance satisfactory to Mortgagee for such business or the carriage of such cargo.

(b) Mortgagor is conducting and will conduct and will cause any lessee of the Rolling Stock to conduct its business and operations in compliance with (i) all applicable laws and directives of governmental authorities having the force of law including, without limitation, all laws of the jurisdictions in which its operations involving the Rolling Stock may extend, (ii) the interchange rules of the Association of American Railroads, (iii) all lawful rules of the Department of Transportation, the Surface Transportation Board and any other legislative, executive, administrative or judicial body, and (iv) all lawful rules of any other association of carriers or shippers exercising any power or jurisdiction over Mortgagor or over the Rolling Stock, to the extent that such laws and rules affect the title, operation, storage, maintenance or use of the Rolling Stock.

(c) Mortgagor has filed and will file true, complete and timely tax returns and has paid/will pay all taxes due in respect of the ownership of its assets and the conduct of its operations except to the extent that the payment of such taxes is being contested in good faith, adequate reserves having been provided for the payment thereof.

(d) The execution, delivery and performance of this Mortgage, the Assignment of Payments and the Forbearance Agreement does not and will not contravene any provision of law, including, without limitation thereto, any statute, rule, regulation, judgment, decree, order, franchise or permit applicable to Mortgagor.

#### **Section 5 - Requisition of Title**

In the event that the title to the Rolling Stock, or any of them, shall be requisitioned, purchased or taken by any governmental department, agency or representative, pursuant to any present or future law, proclamation, decree, order or otherwise, the compensation, purchase price, reimbursement or award for such requisition, purchase or other taking of such title shall be payable to Mortgagee, who shall be entitled to receive the same and shall apply it as provided in Article II, Section 2 hereof; and in the event of any such requisition, purchase or taking, Mortgagor shall promptly execute and deliver to Mortgagee such documents, if any, and shall promptly do and

perform such acts, if any, as Mortgagee's counsel, in its sole but reasonable opinion, may deem necessary or useful to facilitate or expedite the collection by Mortgagee of such compensation, purchase price, reimbursement or award.

#### **Section 6 - Requisition of Use**

In the event that any governmental department, agency or representative thereof shall not take over the title to the Rolling Stock, or any of them, but shall requisition, lease, or in any manner take over the use of such Rolling Stock pursuant to any present or future law, proclamation, decree, order or otherwise, all rentals and compensation resulting therefrom shall be payable to Mortgagee and if, as a result of such requisitioning, leasing or taking of the use of the Rolling Stock, or any of them, such governmental department, agency or representative thereof shall pay or become liable to pay any sum by reason of the loss of or injury to or depreciation of the Rolling Stock, any such sum is hereby made payable to Mortgagee, who shall be entitled to receive the same and shall hold it as provided in Article II, Section 2 hereof. In the event of any such requisitioning, leasing or taking of the use of the Rolling Stock, or any of them, Mortgagor shall promptly execute and deliver to the Mortgagee such documents, if any, and shall promptly do and perform such acts, if any, as in the reasonable opinion of counsel for Mortgagee may be necessary or useful to facilitate or expedite the collection by Mortgagee of such claims arising out of the requisitioning, leasing or taking of the use of Rolling Stock, or any of them.

#### **Section 7 - No Additional Liens**

Neither the Mortgagor, nor any Lessee, nor any manager of the Rolling Stock nor their agents has or shall have any right, power or authority to create, incur or permit to be placed or imposed upon the Rolling Stock, or any of them, any liens whatsoever (including without limitation any subsequent mortgage), other than this Mortgage and the Permitted Liens, without the prior written consent of Mortgagee. In the event that any such lien shall be created or arise, Mortgagor shall forthwith discharge such lien. Mortgagor shall have the right to contest in good faith, with due diligence and by appropriate proceedings, without cost or expense to Mortgagee, the validity, applicability or amount of any such lien; provided, however, that Mortgagor, prior to commencing such contest, shall have furnished to Mortgagee a bond, guarantee or other security, satisfactory in form and substance to Mortgagee.

#### **Section 8 - [Reserved]**

#### **Section 9 - Inspection, Repair**

At all times, Mortgagor shall afford Mortgagee or its authorized representative full and complete access to the Rolling Stock at all reasonable times for the purpose of inspecting the condition of the Rolling Stock and their cargos. If default shall be made in keeping the Rolling Stock, or any of them (other than those set forth on the attached Exhibit "A"), in good condition,

repair and appearance and in good and efficient working order, reasonable wear and tear excepted, and acceptable for use in unrestricted interchange, Mortgagee shall have the right (without prejudice, however, to any of Mortgagee's other rights hereunder) to effect such repairs as shall in its opinion be necessary, following written notice from Mortgagee to Mortgagor as to the necessity for such repairs and the failure of Mortgagor, within a reasonable period of time thereafter, to effect such repairs. For the purpose of effecting such repairs, Mortgagor shall give to Mortgagee and its representative complete access to the Rolling Stock. Mortgagor on demand shall repay to Mortgagee every sum of money expended for such repairs with interest payable at the default rate specified in the L&S Note. From the time the sum(s) have been expended until repayment of such sum(s) and interest thereon, the same shall be a charge on the Rolling Stock.

#### **Section 10 - Taxes, Assessments**

(a) Mortgagor agrees to pay, indemnify and hold Mortgagee harmless from all taxes, assessments and charges (including, but not limited to, all license and registration fees, levies, imposts, duties, private property and transfer stamp taxes and charges or withholdings or payments to be made in lieu thereof together with any penalties, fines or interest thereon or payments to be made in lieu thereof) imposed on Mortgagee or Mortgagor by the United States of America or any other local government or taxing authority in the United States of America or by any taxing authority or political or governmental subdivision of any foreign country on or with respect to the Rolling Stock, or any of them, or on the purchase, ownership, delivery, possession, use, operation, return or other disposition thereof (including, without limitation, any disposition in exercise of the rights of Mortgagee arising from an Event of Default hereunder) or on the interest, receipt or earnings arising therefrom or on or with respect to this Mortgage (all such taxes, assignments, charges, levies, fees, imposts, duties, charges or withholdings or payments to be made in lieu thereof and any such penalties, fines or interest therein hereinafter referred to in this Section 10 as a "Levy" or as "Levies"). Mortgagor's obligations to pay Levies shall not apply to any Levy measured by the net income payable by Mortgagee to any state of the United States of America in which Mortgagee has its principal office or political subdivision thereof or to the United States of America under the Internal Revenue Code of 1986, as amended ("Code") in consequence of the receipt of payments with respect of the L&S Loan or the Evans Loan. Mortgagor's obligation to pay Levies shall include the obligation to pay any increase to the Mortgagee in Mortgagee's net income tax as a result of inclusion in income of Mortgagee of any amount required by this Section 10 to be paid to or for Mortgagee. In the event Mortgagee makes a demand upon Mortgagor pursuant to the immediate previous sentence, Mortgagee agrees to supply to Mortgagor, Mortgagee's supporting calculations as to Mortgagor's liability in that regard. A Levy shall be fully subject to the indemnity provisions of this Section 10 regardless of the extent to which an apportionment or allocation formula of any such jurisdiction requires the apportionment or allocation to it for taxing purposes of the income of Mortgagee. If claim is made against Mortgagee for any Levy, Mortgagee shall use reasonable efforts to notify Mortgagor thereof, but failure to do so shall not prejudice Mortgagee's rights hereunder. The foregoing notwithstanding, Mortgagor shall not be liable to Mortgagee for a fine, penalty or interest which constitutes a Levy, to the extent, but only to the extent, that such fine, penalty or interest arose before Mortgagee had knowledge as to the existence of such Levy.

(b) In the event Mortgagee is required to make any payment under this Section 10, Mortgagor shall pay to Mortgagee an amount which after taking into account all taxes required to be paid by Mortgagee in respect of the receipt thereof under the laws of the United States of America or of any state or local government or taxing authority in the United States of America or any state or local government or taxing authority or government entity of any foreign country, shall be equal to the amount of such payment. The sum payable pursuant to this Subsection 10(b) shall be payable thirty (30) days after Mortgagee delivers to Mortgagor verification that the indemnity is due pursuant to this Subsection 10(b) including, without limitation, a statement describing in reasonable detail the circumstances requiring indemnification hereunder and setting forth in reasonable detail the computation of the amount thereof.

### **Section 11 - Other Obligations**

Except as described in Section 7 of this Article III, Mortgagee shall not sell, mortgage, lease (except for the Leases), pledge or transfer any property subject or intended to be subject to this Mortgage, and shall not hypothecate or attempt to hypothecate any rentals or fees in respect of the Rolling Stock or any of them, without the prior written consent of Mortgagee. Any such act shall be expressly subject to this Mortgage and the prior lien created hereby, and any such written consent to any one such act shall not be construed to be a waiver of this provision in respect to any subsequent act. At no time shall Mortgagor make or suffer to be made any material alterations in the structure of the Rolling Stock without the prior written permission of Mortgagee (provided, however Mortgagor may sell Rolling Stock for a price equal to or greater than its fair market value if the net proceeds of such sale are immediately applied to prepay debt secured by a Permitted Lien, or to prepay the Obligations).

### **Section 12 - Establishment and Maintenance of the Mortgage**

Mortgagor at its expense shall comply with and satisfy all the provisions of all laws as amended from time to time affecting the Rolling Stock and shall establish and maintain this Mortgage as a security interest on the property hereby mortgaged or intended to be mortgaged and upon all renewals and replacements of such property to the extent of the Obligations, subject only to the Permitted Liens. Mortgagor shall perform all acts and execute all instruments necessary or required by Mortgagee in order to permit the immediate registration of this Mortgage with the Surface Transportation Board.

### **Section 13 - Expenses**

Mortgagor upon demand shall pay to Mortgagee (or as it may direct) the amount of all investigation expenses, mortgage taxes, recording charges, filing fees, revenue and documentary stamps and any other charges incurred by Mortgagee in connection with the preparation, completion or registration of this Mortgage, the Forbearance Agreement, the Assignment of Payments and any other documents related thereto, including, without limitation, outside counsel's expenses and reasonable fees. Mortgagor shall pay any and all expenses incurred at any time by Mortgagee in the



care of the mortgaged property or the protection and enforcement of its rights, including, without limitation, reasonable counsel's fees and expenses. If such fees and expenses are paid by Mortgagee, Mortgagor, upon request, shall reimburse Mortgagee. The payment of all expenses under this Section shall be secured by this Mortgage.

#### **Section 14 - Other Documents**

In the event that this Mortgage or any provision hereof shall be deemed invalidated in whole or in part by any present or future law or any decision of any authoritative court, Mortgagor shall execute and deliver such other and further instruments and do such things as in the sole but reasonable opinion of Mortgagee and its counsel will carry out the true intent and spirit of this Mortgage. From time to time, Mortgagor shall execute and deliver such further documents and assurances as in the sole but reasonable opinion of Mortgagee and its counsel may be required to more effectively subject the property hereby mortgaged or intended to be mortgaged to the Obligations and to the payment of the L&S Loan and the Evans Loan with interest thereon and to the performance of each and all of the Obligations.

#### **Section 15 - Reports**

Mortgagor will furnish to Mortgagee, on such dates as Mortgagee may from time to time reasonably request, an accurate report certified by Mortgagor stating as of a recent date (but not earlier than a date 90 days preceding the date of such statement) (i) that the Rolling Stock has been maintained and repaired in accordance with this Mortgage, (ii) the location of the Rolling Stock and (iii) such other information regarding the location, condition and state of repair of the Rolling Stock as Mortgagee may reasonably request.

#### **Section 16 - Performance and Notice**

Mortgagor shall promptly give notice to Mortgagee of: (i) any substantial dispute between Mortgagor or any Lessee and any governmental authority with respect to taxes or any other matter in connection with the Rolling Stock or which might, in any way, interfere with the normal use and operation of the Rolling Stock, or any of them; (ii) the occurrence of any Event of Default or event that, with the giving of notice or the passing of time or both, would constitute an Event of Default.

### **ARTICLE IV - DEFAULT**

#### **Section 1 - Events of Default**

The following events and occurrences shall constitute Events of Default under this Mortgage:

(a) Payment Default. (i) Mortgagor or the Evans fail to make payment to Mortgagee when due and payable of any amount that Mortgagor or the Evans are obliged to pay with respect to the Obligations; or

(b) Representation Default. Any representation or warranty of Mortgagor or the Evans contained in this Mortgage, the Forbearance Agreement or the Assignment of Payments proves to be in any material respect untrue, incorrect or misleading as of the date when made or on the date hereof; or

(c) Other Provisions Default. Mortgagor or the Evans default (other than a default or violation referred to elsewhere in this Section 1 of Article IV) in the performance of or violate any term, covenant or provision of this Mortgage, the Forbearance Agreement, the Assignment of Payments, the L&S Loan Agreement, the L&S Note, the L&S Deed of Trust, the Evans Note or the Evans Deed of Trust; or

(d) Approval and Certificate Default. Any governmental consent or approval granted or required in connection with this Mortgage, the Forbearance Agreement or the Assignment of Payments is revoked or restricted in any material way, unless such revocation or restriction is canceled or otherwise remedied to the satisfaction of Mortgagee and its counsel within 10 days of its imposition; or

(e) Illegality Default. It becomes unlawful for Mortgagor or the Evans to perform any Obligations; or

(f) Mortgage Default. Any judgment, order, decree or legislation is entered or promulgated the effect of which would be render this Mortgage partially or wholly ineffective, invalid or unenforceable or any party holding a mortgage on any Rolling Stock shall take steps to commence foreclosure or sale of any Rolling Stock; or

(g) Nationalization Default. (i) The Rolling Stock, or any of them, shall be arrested, levied upon or taken into custody by virtue of any attachment or execution against Mortgagor or against the Rolling Stock or seized by any governmental or other authority and shall not be released from such arrest, levy, attachment, execution, or seizure within 30 days, (ii) Mortgagor shall fail to give Mortgagee prompt notice of any such contingency; (iii) the title to the Rolling Stock, or any of them, or their use shall be requisitioned, purchased or taken by any government or any department, agency or representative thereof, and in the case of this clause (iii), Mortgagor fails to receive the compensation, purchase price, reimbursement or award as a result of such requisitioning, purchase or taking, as contemplated in Article III Section 5; or

(h) Insurance Default. Mortgagor shall fail to procure and/or maintain the insurance required hereby or knowingly shall violate or suffer or permit the violation of any of the warranties or conditions of the policies of insurance required hereby.

Then and in each and every case Mortgagee may thereupon:

(i) Without further demand, protest or notice of any kind to Mortgagor or the Evans, declare all Obligations to be due and payable immediately, and upon such declaration the same shall become and be immediately due and payable;

(ii) Proceed by appropriate court action or actions either at law or in equity to enforce performance by Mortgagor or the Evans of their Obligations and/or recover a judgment for damages for the breach thereof, including, but not limited to, any amount due with respect to the Obligations, either by its terms or by virtue of such declaration, and collect the same out of any property of Mortgagor or the Evans;

(iii) Take the Rolling Stock without legal process at any time wherever the same may be found, and without being responsible for loss or damage to the Rolling Stock which shall have occurred prior to the taking, hold, lease, operate or otherwise use such Rolling Stock for such time and on such terms as Mortgagee may determine advisable;

(iv) Take the Rolling Stock without legal process at any time wherever the same may be found, and, if it seems desirable to Mortgagee, and without being responsible for loss or damage to the Rolling Stock which shall have occurred prior to such taking, sell to the extent permitted by law, at private or public sale, such Rolling Stock free from any claim by Mortgagor of any nature whatsoever upon such notice as may be required by law. Such sale may be held at such place and at such time as Mortgagee may have specified in such notice and in such manner as Mortgagee may deem advisable, and may be conducted without bringing the Rolling Stock to be sold to the place of sale. Mortgagee may become a purchaser at such sale, to the extent permitted by law. From time to time Mortgagee may adjourn any such sale by announcement at the time and place appointed for such sale or any adjourned sale; and without further notice of publication, Mortgagee may make such sale at the time and place to which the same shall have been so adjourned. Notwithstanding any such sale, Mortgagor shall be and remain liable for any deficiency remaining after applying the proceeds of disposition of the Rolling Stock as provided in Section 5 of this Article IV, to the extent permitted by law. Mortgagee and its assigns hereby irrevocably are appointed the true and lawful attorney and attorneys of Mortgagor in its name and stead to make all necessary transfers of the Rolling Stock thus sold, and for that purpose it or they shall execute and deliver all necessary instruments of assignment and transfer, Mortgagor hereby ratifying and confirming all that its said attorney or attorneys shall lawfully do by virtue thereof. Nevertheless, Mortgagor shall, if so requested by Mortgagee, ratify and confirm such sale by executing and delivering to the purchaser or purchaser of the Rolling Stock such proper bills of sale, conveyances, instruments of transfer and releases as may be designated in such request;

(v) Perform any Obligation of Mortgagor or the Evans and Mortgagor will pay Mortgagee the cost thereof upon demand by Mortgagee;

(vi) Assert such other rights and remedies of a secured party and of a mortgagee under the laws of the State of North Carolina (regardless of whether such law or one similar thereto has been enacted in the jurisdiction where the rights or remedies are asserted); and/or

(vii) Demand, collect, receive, compromise and sue for, so far as may be permitted by law, all freights, hire, rents, earnings, issues, revenues, income and profits of the Rolling Stock, or any of them, and all amounts due from underwriters from any insurance thereon as payment of losses or as return premiums or otherwise, awards and recoveries, and all other sums, due or to become due at the time of the happening of any Event of Default in respect of the Rolling Stock or in respect of any insurance thereon from any person whomsoever, and to make, give, and execute in the name of Mortgagor acquittances, receipts, releases, or other discharges for the same, whether under seal or otherwise, and to endorse and accept in the name of Mortgagor, notes, drafts, warrants, agreements and all other instruments in writing with respect to the foregoing. Mortgagee is hereby appointed attorney-in-fact of the Mortgagor upon the happening of any Event of Default, in the name of Mortgagor, to act in connection with the foregoing.

No delay or failure by Mortgagee to take action of any kind upon any one default or series of defaults in this Mortgage as provided by this Article shall be action upon such default or any succeeding default deemed a waiver of the right to take action upon such default or any succeeding default nor shall the acceptance by Mortgagee of any payments upon this Mortgage from any source be deemed a waiver of this provision.

## **Section 2 - Power of Attorney**

In the event that the Rolling Stock, or any of them, shall be arrested or detained by any marshall or other officer of any court of law or equity or by any government or other authority and shall not be released from arrest or detention within 60 days from the date of arrest or detention, Mortgagor does hereby authorize and empower Mortgagee, its successors or assigns, in the name of Mortgagor or its successors or assigns, to apply for and receive possession of or to take possession of the Rolling Stock, or any of them, with all the rights and powers that Mortgagor or its successors or assigns may have, possess and exercise in any such event, and this power of attorney shall be irrevocable and may be exercised not only by Mortgagee but also by any assignee or appointee, of Mortgagee with full power of substitution to the same extent and effect as if such assignee or appointee had been named by express designation.

Mortgagor also authorizes and empowers Mortgagee, its assigns or appointee, following written notice to Mortgagee and the failure of Mortgagee to take the following actions within a reasonable period of time thereafter, to appear in the name of Mortgagor, its successors and assigns, in any court where a suit is pending against any Rolling Stock because of or on account of any alleged lien against any Rolling Stock from which such Rolling Stock has not been released and to take such proceedings and do such things as to them or to any of them may seem proper toward the defense of such suit and the discharge of such lien, and all moneys expended by them or any of them for the purpose of such defense and/or discharge shall be a debt due from Mortgagor, its successors

and assigns, to Mortgagee, its successors and assigns, and payment thereof shall be secured by the lien of this Mortgage in like manner and extent as if the amount and description thereof were written herein. The foregoing notwithstanding, Mortgagee shall have the right to exercise any of the foregoing rights, at Mortgagor's expense, at any time Mortgagee, in the exercise of its reasonable judgment, determines that Mortgagor's title to or Mortgagee's lien on any of the Rolling Stock is in eminent jeopardy.

### **Section 3 - Rights, Powers and Remedies Cumulative; Waiver**

Each and every power and remedy in this Mortgage specifically given to Mortgagee shall be cumulative and shall be in addition to every other power and remedy herein or in any other document executed in connection hereto specifically given or now or hereafter existing at law, in equity or by statute, and each and every power and remedy whether specifically in this Mortgage given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by Mortgagee; and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other power or remedy. No delay or omission by Mortgagee in the exercise of any right or power or in the pursuance of any remedy accruing upon any default as above defined shall impair any such right, power or remedy or be construed to be a waiver thereof or of any such event of default or be any acquiescence therein; nor shall the acceptance by Mortgagee of any security or any payment on account of any Obligation though made after default be deemed a waiver of any right to take advantage of any future Event of Default or of any past Event of Default not completely cured thereby.

### **Section 4 - Rights, Powers and Remedies Preserved**

In case Mortgagee shall have proceeded to enforce any right or pursue any remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then and in every such case, Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder with respect to the property subject or intended to be subject to this Mortgage, and all rights, remedies and powers of Mortgagee shall continue as if no such proceeding had been taken.

### **Section 5 - Application of Proceeds**

The proceeds of any sale made either under the power of sale hereby granted to Mortgagee or under a judgment or decree in any judicial proceeding for the foreclosure of this Mortgage or for the enforcement of any remedy granted to Mortgagee hereunder, or any net earnings arising from the management, lease or other use of the Rolling Stock by Mortgagee under any of the powers herein reserved or the proceeds of any insurance and any claims for damages on account of the Rolling Stock of any nature whatsoever and any sums on deposit to the credit of Mortgagor or

Mortgagee from earnings of the Rolling Stock as provided herein, shall be applied or retained as follows:

- First: To the payment of all reasonable out of pocket costs and expenses of Mortgagee, including the reasonable compensation of its agents and attorneys, by reason of any sale, retaking or operation of the Rolling Stock or other property mortgaged hereunder and all other sums payable to Mortgagee hereunder by reason of any expenses or liabilities incurred or advances made by it for the protection of the security or of any of its rights hereunder or in the pursuit of any remedy hereby conferred, and at the option of Mortgagee to the payment of all taxes, assessments, or liens prior to the lien of this Mortgage.
- Second: To the payment of the Obligations and for any other amounts then due and payable pursuant to the terms of this Mortgage, the Forbearance Agreement, the Assignment of Payments, the L&S Loan Agreement, the L&S Note, the L&S Deed of Trust, the Evans Note or the Evans Deed of Trust in such order as Mortgagee in its sole discretion may elect.
- Third: Any surplus thereafter remaining, subject to the rights of any mortgagee under a subsequent mortgage on the Rolling Stock or the rights of other third parties, to Mortgagor or Mortgagor's successors in interest and assigns, or to whomever may be lawfully entitled to receive the same.

In the event that the proceeds are insufficient to pay the amounts specified in paragraphs "First" and "Second" above, Mortgagee shall be entitled to collect the balance from Mortgagor or any other person liable therefor.

#### **Section 6 - Reimbursement for Expenditures**

If Mortgagor or the Evans shall default in the performance of any of the Obligations, following written notice to Mortgagor and the failure of Mortgagor to render such performance or cause such performance within a reasonable period of time thereafter, Mortgagee may in its discretion do any act or make any expenditures necessary to remedy such default and Mortgagor shall promptly reimburse Mortgagee, with interest at the default rate specified in the L&S Note for any and all expenditures so made or incurred, and until Mortgagor has so reimbursed Mortgagee for such expenditures, the amount thereof shall be a debt due from Mortgagor to Mortgagee and payment thereof shall be secured by the lien of this Mortgage in like manner and extent as if the amount and description thereof were written herein; but Mortgagee, though privileged so to do, shall be under no obligation to Mortgagor to make any such expenditures nor shall the making thereof relieve Mortgagor of any default in that respect. Mortgagor shall also reimburse Mortgagee promptly with interest at the default rate specified in the L&S Note for any and all advances and reasonable expenses made or incurred by Mortgagee at any time in taking the Rolling Stock, or any of them, or otherwise protecting its rights hereunder and for any and all damages sustained by

Mortgagee from or by reason of any default or defaults of Mortgagor. The foregoing to the contrary notwithstanding, Mortgagee shall have the right to take such actions as Mortgagee deems reasonably necessary, at Mortgagor's expense, at any time Mortgagee, in the exercise of its reasonable judgment, determines that Mortgagor's title to or lien on the Rolling Stock or any of the other Collateral is in eminent danger.

#### **Section 7 - Return of the Rolling Stock**

If Mortgagee shall rightfully demand possession of the Rolling Stock pursuant to this Mortgage or otherwise, Mortgagor shall forthwith remove or cause to be removed any lettering of the names or initials or other insignia customarily used by Mortgagor or Lessee from the Rolling Stock at its cost and expense. Mortgagor shall deliver the possession of the Rolling Stock to Mortgagee and Mortgagor will pay for any repairs necessary to restore the Rolling Stock to the condition required in this Mortgage. Such Rolling Stock will be returned free from residue and complete with all parts, equipment and accessories. For such purpose Mortgagor, at its own cost and expense, shall forthwith assemble or cause to be assembled the Rolling Stock and place them upon such storage tracks as Mortgagee may designate or, in the absence of such designation, as Mortgagor may select, and Mortgagor shall pay all costs and expenses of such storage for a period not exceeding 180 days from the date that the Rolling Stock are so assembled, and at Mortgagor's own cost and expense shall transport or cause to be transported up to 1,000 miles under Mortgagor's reporting marks the Rolling Stock at any time within such 180 day period on the written direction of Mortgagee to do so to the place Mortgagee directs. The assembling, delivery, storage and transportation of the Rolling Stock as hereinabove provided are of the essence of this Mortgage and, upon application to any court of equity having jurisdiction in the premises, Mortgagee shall be entitled to a decree against Mortgagor so as to require Mortgagor to assemble, deliver, store and transport the Rolling Stock.

Without in any way limiting the obligation of Mortgagor under the foregoing provisions of this Section 7, Mortgagor hereby irrevocably appoints Mortgagee as its agent and attorney, with full power and authority, at any time while Mortgagor is obligated to deliver possession of the Rolling Stock to Mortgagee, to demand and take possession of the Rolling Stock in the name and on behalf of Mortgagor from whomsoever shall be at the time in possession of the Rolling Stock.

#### **ARTICLE V - Mortgagor's Possession and Use of the Rolling Stock**

(a) Until the occurrence of an Event of Default that has not been cured or waived, Mortgagor or Lessees, as the case may be, shall be suffered and permitted to retain actual possession and use of the Rolling Stock.

Mortgagor shall not use or permit the use of Rolling Stock with an aggregate fair market value in excess of 5% of the fair market value of all of the Rolling Stock outside the United States of America at any one time. Mortgagor shall not, without the prior written consent of Mortgagee,

part with the possession or control of, or suffer or allow to pass out of its possession or control, the Rolling Stock, except that Mortgagor may permit the use thereof or any part thereof by Lessees pursuant to the Leases and by railroad companies in the usual interchange of traffic agreement, but only on and subject to all the terms and conditions of this Mortgage.

(b) All per diem payments, lease rentals and other charges payable for the use of the Rolling Stock while being used by others and proceeds payable for the loss, destruction or damage of or to the Rolling Stock under the current Code of Rules Governing the Settlement for Destroyed or Damaged Rolling Stock adopted by the Association of American Railroads shall be paid to Mortgagee and may be applied by Mortgagee against any liability of Mortgagor to Mortgagee under the Obligations or any expense incurred by Mortgagee because of such Event of Default and otherwise as provided in Section 5 of Article IV.

#### **ARTICLE VI - Other Acts by Mortgagor**

Mortgagor (if requested by Mortgagee) shall at its own expense execute, sign, perfect, do, and register every such document, act, or thing as in the reasonable opinion of Mortgagee or its counsel may be necessary or desirable for the purpose of implementing or perfecting any assignment or transfer of the Obligations or of the interest of Mortgagee hereunder.

#### **ARTICLE VII - Miscellaneous**

##### **Section 1 - Counterparts**

This Mortgage may be executed simultaneously in any number of identical copies each of which shall constitute an original for all purposes.

##### **Section 2 - Notices**

Any notice required or permitted to be given hereunder shall be in writing and shall be (i) personally delivered or (ii) transmitted by postage prepaid certified mail to the parties as follows (as elected by the party giving such notice):

To Mortgagor:

L&S Holding Company  
Post Office Box 1929  
Laurinburg, North Carolina 28353  
Attention: Murphy Evans

To Mortgagee:

Metropolitan Life Insurance Company



4427 Garwood Place  
P.O. Box 69  
Richmond, Indiana 47375-0069  
Attention: Philip M. Shirden

The date of any notice hereunder shall be deemed to be (i) the date of receipt if delivered personally, or (ii) the date five days after posting if transmitted by mail. Any party may change its address for purposes hereof by notice to the other parties hereto.

### **Section 3 - Successors and Assigns**

All the covenants, promises, stipulations and agreements of Mortgagor and all the rights and remedies of Mortgagee in this Mortgage contained shall bind Mortgagor, its successors and assigns, and shall inure to the benefit of Mortgagee, its successors and assigns, whether so expressed or not. In the event that Mortgagee shall assign its interests, Mortgagor shall execute such consents thereto as Mortgagee shall require but such consent shall not be required for the validity of such assignment.

### **Section 4 - Severability**

In case any one or more of the provisions contained in this Mortgage shall be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

### **Section 5 - Modification**

This Mortgage exclusively and completely states the rights of Mortgagee and Mortgagor with respect to the Rolling Stock. No modification, variation, termination, discharge or abandonment hereof and no waiver of any of the provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of Mortgagee and Mortgagor or the representatives, successors, transferees or assigns of either, subject, however, to the limitations on assignment hereof by Mortgagor. This Mortgage supersedes any and all prior representations, warranties and/or inducements, written or oral, heretofore made by Mortgagee concerning this transaction, which are null and void and of no force or effect whatsoever.

### **Section 6 - No Liability of Mortgagee**

Mortgagee shall not be responsible for any loss, liability or damage under the Leases, or under or by reason of this Mortgage, other than to the extent such loss, liability or damage arises from the gross negligence or willful misconduct of Mortgagee. Should Mortgagee incur any such liability, loss or damage, including without limitation such liability, loss or damage incurred in the defense of any claims or demands whatsoever asserted against Mortgagee under the Leases or under or by reason of this Mortgage, the amount thereof, including costs, expenses and attorneys' fees,

specified in the L&S Note, and Mortgagor agrees that it shall reimburse Mortgagee therefor immediately upon demand.

**Section 7 - Headings and References**

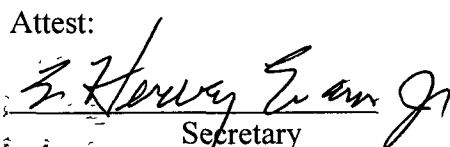
All paragraph headings are inserted for convenience only and shall not affect any construction or interpretation of this Mortgage. Unless otherwise indicated, all references herein to clauses and other subdivisions refer to the corresponding paragraphs, clauses and other subdivisions of this Mortgage; the words "herein", "whereof", "hereto", "hereunder" and words of similar import refer to this Mortgage as a whole and not to any particular paragraph, clause or other subdivision hereof, and reference to a numbered or lettered subdivision of a paragraph shall include relevant matter within the section which is applicable to but not within such numbered or lettered subdivision.

**Section 8 - Governing Law**

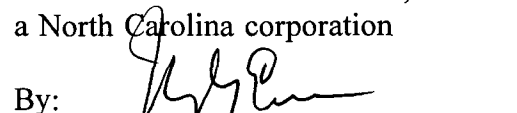
**THIS MORTGAGE SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NORTH CAROLINA AND TO THE EXTENT THEY PREEMPT SUCH LAWS, THE LAWS OF THE UNITED STATES.**

**IN WITNESS WHEREOF**, Mortgagor has executed this Mortgage as of the day and year first above written.

Attest:

  
\_\_\_\_\_  
Secretary  
[Corporate Seal]

L&S HOLDING COMPANY,  
a North Carolina corporation

By:   
\_\_\_\_\_  
Name: Murphy Evans  
Title: President

Attest:

\_\_\_\_\_  
Secretary  
[Corporate Seal]

METROPOLITAN LIFE INSURANCE  
COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_